

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHERRY L. HULLUM
Claimant

VS.

STATE OF KANSAS
Respondent and
Self-Insured

Docket No. 154,143

ORDER

Claimant requested review of the Award dated June 30, 1995, entered by Special Administrative Law Judge William F. Morrissey. The Appeals Board heard oral argument on November 2, 1995.

APPEARANCES

Steven M. Tilton of Topeka, Kansas, appeared for the claimant. Kathryn D. Myers of Topeka, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Special Administrative Law Judge denied claimant's request for benefits. Claimant asked the Appeals Board to review the following issue, among others, which is dispositive of this review: Whether claimant sustained personal injury by accident arising out of and in the course of employment with the respondent. Because that issue is dispositive, that is the only issue addressed by the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be affirmed.

For the reasons specified by the Special Administrative Law Judge in the Award, the Appeals Board adopts both of the Judge's conclusions that claimant failed to prove it was more probably true than not that claimant's miscarriage was caused by the alleged work-related incidents and also that claimant failed to prove that the miscarriage caused the alleged post-traumatic stress disorder. The Appeals Board also finds that claimant has failed to prove that claimant more probably than not sustained personal injury by accident arising out of and in the course of employment with respondent as a result of the alleged work-related incidents on February 8 and February 11, 1991.

Claimant contends blows to the abdomen she allegedly received on both February 8 and February 11, 1991, resulted in post-traumatic stress disorder. Claimant, therefore, contends she is entitled to workers compensation benefits for that psychological condition. The Appeals Board disagrees.

The medical evidence addressing the issue whether trauma to the abdomen caused the death of claimant's approximately 12-week-old fetus indicates it would be extremely unlikely, if not impossible, at that stage of pregnancy for such trauma to result in miscarriage. At 12 weeks of gestation the uterus is still well protected by bone structure within the pelvis making it well protected from abdominal trauma. That evidence was provided by board-certified obstetrician and gynecologist Grace Morrison, M.D., and is uncontroverted. Further, based upon the degeneration noted in the surgical tissue report, Dr. Morrison believes fetal death occurred sometime before February 11, 1991. Other than the possibility that the alleged incidents caused claimant's miscarriage, the record fails to establish any other physical injury that claimant might have sustained.

In the absence of proof of physical injury, claimant's request for benefits for post-traumatic stress disorder must fail. Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557, rev. denied 245 Kan.784 (1989), requires claimant to

prove the following three elements: (1) a work-related physical injury; (2) symptoms of traumatic neurosis; and (3) the neurosis is directly traceable to the physical injury.

Injury is defined by K.S.A. 1990 Supp. 44-508(e) as follows:

"Personal injury and injury mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence."

Any damage or lesion in the physical structure of a worker causing harm may be personal injury if it occurs under the stress of the usual labor. DeMars v. Rickel Manufacturing Corporation, 223 Kan. 374, 379, 573 P.2d 1036 (1978). Injury is the physical change in the body which occurs as a result of the accident. Barke v. Archer Daniels Midland Co., 223 Kan. 313, 317, 573 P.2d 1025 (1978). Based upon the entire record, the Appeals Board finds the evidence fails to prove that claimant sustained any injury from the alleged February 1991 incidents. As personal injury requires more than proof of mere physical contact, claimant's argument that she is only required to prove a causal relationship between the psychological condition and physical contact is without basis.

Equally important as the above, however, the Appeals Board finds that claimant has failed to prove that the incidents occurred upon which she bases her claim for benefits. That conclusion is based upon a consideration of the entire evidentiary record which indicates significant discrepancies in claimant's testimony and the written records and memories of others. As the Special Administrative Law Judge noted, many of the details of claimant's version of the events are either refuted or are not substantiated by records which normally would be thought to contain such information.

Based upon the above findings, the other issues listed by claimant in her application for review or addressed in her brief are rendered moot.

The Appeals Board adopts the Special Administrative Law Judge's findings and conclusions as set forth in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated June 30, 1995, entered by Special Administrative Law Judge William F. Morrissey should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven M. Tilton, Topeka, KS
Kathryn D. Myers, Topeka, KS
William F. Morrissey, Special Administrative Law Judge
Office of Administrative Law Judge, Topeka, KS
Philip S. Harness, Director